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DIRECT EXAMINATION OF PROBLEM WITNESSES & WITNESS CONTROL FACTORS

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***WITNESS CONTROL
FACTORS
&
DEMEANOR ISSUES***

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*MARRIED?

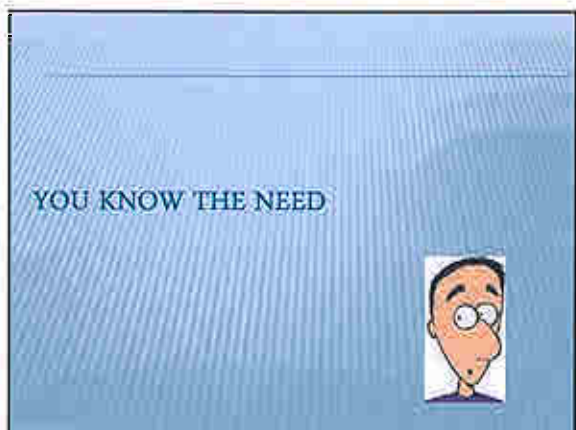


*LONG-TERM
RELATIONSHIP?

*HAVE CHILDREN?









THE GOOD NEWS

✕ THERE'S A ROADMAP TO VICTORY



✕ APPROACH POINT CROSS-EXAMINATION

HERE'S A LITTLE BIT MORE...

PREPARING FOR CROSS-EXAMINATION

HOSTILE VICTIMS

WITNESSES

CHILDREN

GANG MEMBERS

GOALS OF CROSS-EXAMINATION

- ✧ FAIRLY
- ✧ ADVANCE YOUR CASE
- ✧ NEGATE THE DEFENSE
- ✧ SKILLFULLY
- ✧ WITHOUT TRICKS OR ABUSE

IN THE BEGINNING...



★ **YOUR CROSS IS ONLY
AS GOOD AS YOUR
PREPARATION** ★

You Must prepare for control
and demeanor issues, too

GENERALLY, THERE ARE NO
CONTROL OR DEMEANOR
ISSUES WHEN GETTING
CONCESSIONS

**ACCOMPLISHING YOUR
GOALS OF
CROSS-EXAMINATION
WITH
OUT-OF-CONTROL
WITNESSES**

GOAL # 1 : FAIRLY

- × NO ONE LIKES A **BULLY**
- × SOME PEOPLE DON'T LIKE ATTORNEYS
- × SOME PEOPLE DON'T TRUST ATTORNEYS
- × SOME PEOPLE RESENT ATTORNEYS



GOAL # 1 : FAIRLY

- × Demeanor
- × Voice
- × "I'M NOT TRYING TO TRICK YOU"
- × "WOULD YOU LIKE TO SEE THE EXHIBIT?"

CONTROL IS **NOT** YELLING OR **BULLYING**

**YOU MAY LOSE
CREDIBILITY
WITH THE JURY**



GOAL #2 : ADVANCE YOUR CASE

- × PREPARATION, PREPARATION, **PREPARATION**
- × KNOW ALL YOU CAN ABOUT THE WITNESS
- × WHAT TYPE OF PERSONALITY CAN YOU EXPECT FROM THEM?



TYPES OF PERSONALITIES

- × CONTROLLERS
- × RAMBLERS
- × ARGUERS
- × "YOU CAN'T MAKE ME"

HOW TO CONTROL CONTROLLERS

- × SHORT CONCISE QUESTIONS
- × LEADING
- × LOOP BACK QUESTIONS

EXAMPLES OF CONTROLLING CONTROLLERS

* **Point to Prove:** Defendant and his car are at the crime scene of the murder on 8/18/11

+ You own a car

- It's an Impala
- A 1994 Impala
- It's blue
- You drove this Impala
- Had driven it before
- You have a set of keys
- Your keys include a key to the Impala
- On 8/18/10 you had these keys
- Including the key to Impala
- You used key to start Impala on 8/18/11
- You put Impala in drive
- You were sitting in the driver's seat


- You put your foot on the gas
- You pressed the gas pedal down
- The steering wheel worked on 8/18/11
- Wheel allowed you to move the car
- You could turn the car right
- You could turn the car left
- You could steer the Impala
- After giving the Impala gas, you steered it
- You turned left out of your driveway
- You drove 300 yards to Bennett Street
- You turned left at Bennett Street

- You used the Impala's gas pedal to accelerate
- You drove the speed limit
- You drove to 156 Southern Street
- You moved your foot to the brake pedal
- You braked
- You turned the steering wheel right
- The Impala turned into the driveway
- You stopped the Impala
- By keeping your foot on the brake
- You moved the Impala's shifter to the "Park" position

- × You turned the engine off
- × By turning the keys
- × With your right hand
- × You put your left hand on the driver's door
- × You opened the driver's door
- × And got out of the car

WHAT NOT TO DO:

You drove to the crime scene didn't ya?!!



HOW TO CONTROL RAMBLERS

- × REPEAT QUESTIONS
- × ASK IF THEY UNDERSTOOD THE QUESTION
- × REPEAT QUESTION
- × GO SIT DOWN
- × HAND ON CHIN
- × "ARE YOU DONE?"
- × REPEAT QUESTION
- × STATE THE NEW TOPIC WHEN YOU CHANGE IT
- × MOVE FROM GENERAL TO SPECIFIC

EXAMPLE OF CONTROLLING RAMBLERS

"I'D LIKE TO TALK TO YOU NOW ABOUT THE WALLET."

EXAMPLE OF CONTROLLING RAMBLERS:

"THE WALLET WAS LEATHER, RIGHT?"

Answer: "I've never seen that wallet before. I don't know where it came from. I'm an innocent man!"

"THE WALLET WAS LEATHER, RIGHT?"

Answer: "It was so scary! I've never seen a dead body before. I could have been next!"

"THE WALLET WAS LEATHER, RIGHT?"

WHAT NOT TO DO:

"WHAT WAS THE WALLET LIKE?"



HOW TO CONTROL ARGUERS

- ✧ REPEAT THE QUESTION
- ✧ HAVE THE WITNESS REPEAT THE QUESTION
- ✧ AVOID QUESTIONS WITH NEGATIVES LIKE "YOU HAVEN'T DONE THAT HAVE YOU?"
- ✧ USE SIMPLE WORDS
- ✧ IMPEACH WITH PRIOR STATEMENTS

EXAMPLES OF CONTROLLING ARGUERS

USE PRIOR WRITTEN STATEMENTS AND OTHER EXHIBITS

EXAMPLE OF CONTROLLING ARGUERS:

"YOU TWO ARGUED, DIDN'T YOU?"

Answer: "We didn't argue, we had a discussion."

"WHEN YOU ARGUED, YOU WERE DISCUSSING"

Answer: "We weren't arguing, we had a discussion."

"IN THE ARGUMENT YOU DISCUSSED SOMETHING"

Answer: "Yeah, we talked about something."

EXAMPLE #2 OF CONTROLLING ARGUERS

BREAK THE QUESTION DOWN

"THE WALLET WAS LEATHER, RIGHT?"

Answer: "How would I know, I'm not a blacksmith?"

"YOU'VE OWNED SOMETHING THAT'S LEATHER, RIGHT?"

Answer: "Don't know, don't care. What's the big deal with leather with you?"

- × "YOU HAVE SHOES?"
- × "YOU HAVE A WALLET?"
- × "YOU EVER PLAY BASEBALL?"
- × "YOU HAVE A BALL GLOVE?"
- × "YOU WEAR A BELT?"



WHAT **NOT** TO DO:

"THE WALLET WAS LEATHER AND YOU KNOW IT!"



HOW TO CONTROL "YOU CAN'T MAKE ME"



GO ELEMENTARY - BE NICE

"SIR, DID YOU HEAR MY QUESTION?"
"ARE YOU HAVING TROUBLE UNDERSTANDING ME?"
"DO YOU KNOW IT'S YOUR TURN?"
"THE JURY WOULD LIKE TO HEAR YOUR ANSWER."
"CAN YOU TELL US YOUR ANSWER?"



WHAT **NOT** TO DO:

"DO YOU UNDERSTAND ENGLISH?!"



**EMOTIONS YOU WILL BE CONFRONTED
WITH BY DIFFICULT WITNESSES**

- × ANGER
- × RESENTMENT
- × SUPERIORITY
- × INDIFFERENCE
- × FEAR
- × DRAMA
- × "HOW DARE YOU"

YOUR GOAL.....

- × A
- × M
- × A
- × Z
- × I
- × N
- × G

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DIRECT EXAMINATION OF PROBLEM WITNESSES

• Jacqueline J. Spradling
• Chief Deputy District Attorney
• Shawnee County District Attorney's Office
• 2012

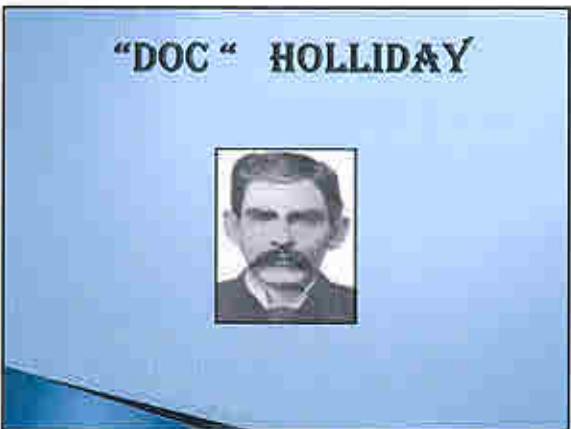
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BONNIE & CLYDE

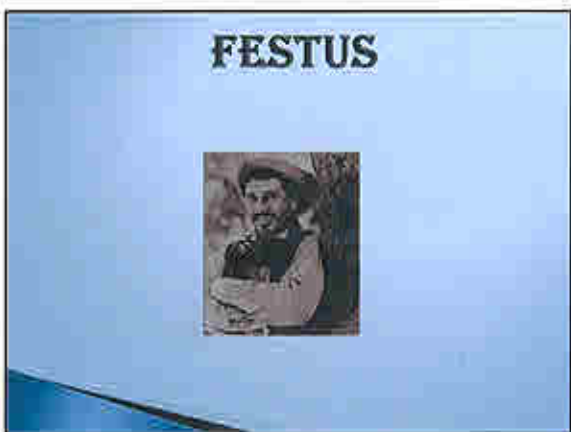














INITIAL CONTACT

- INTRODUCTIONS
- CONTACT INFORMATION
- SERVICES
- QUESTIONS

PRETRIAL PREPARATION

- Always have pretrial meetings
- Have a witness/investigator sit in with you
- Tell witness what police reports say
- Have witness watch their video/read their statement/listen to 911 call
- Explain the case is the State v. the defendant
- Victim is not responsible for "getting the defendant in trouble"
- If you are seeking a conviction so counseling will be mandatory, let the victim know
- Tell victim and witnesses there are many/several others who will be testifying

PREPARING YOUR WITNESSES FOR DIRECT EXAMINATION

- VICTIMS
- WITNESSES
- CHILDREN
- GANG MEMBERS

PURPOSE OF DIRECT EXAMINATION

- Taking the jurors to the scene
- Allowing them to “experience” the crime
- Showing them you have proven your case
- Strengthening them to find the defendant GUILTY
- Resisting jury nullification

IN THE BEGINNING...

YOUR CASE IS ONLY AS
GOOD AS THEIR
INVESTIGATION

TRAIN

**your law enforcement
officers on what you need
to prosecute cases**

HELP

**them understand difficult
witnesses are not
uncommon and you can't
do it without them**

BE PREPARED

**to provide training
specific to domestic
violence and sexual
assault cases**

NOW YOU'RE READY...

REMEMBER THE GOALS OF DIRECT EXAMINATION

- 1 TAKING THE JURORS TO THE SCENE
- 2 ALLOWING THEM TO "EXPERIENCE" THE CRIME
- 3 SHOWING THE JURORS YOU HAVE PROVEN YOUR CASE
- 4 STRENGTHENING THEM TO FIND THE DEFENDANT GUILTY
- 5 RESISTING JURY NULLIFICATION

GOAL #1

**TAKING THE
JURORS
TO THE SCENE**

 Seeing is *not* believing

- To believe the jurors must

SEE
HEAR
SMELL
FEEL

See.....

- colors, shapes, textures (*soft, fuzzy, bumpy*)
- objects (*lamp posts, chairs*)
- people, facial expressions (*fear, surprise*)
- surfaces (*long, short*)
- distances (*these are fun*)
- lighting (*bright, black, none*)
- size (*height, round*)
- TV (*show*)
- radio (*sang*)

HEAR

- SOUNDS (*screaming*)
- EMOTIONS (*fear*)
- FLUCTUATIONS OF VOICE
- EMPHASIS (*"I'll kill you"*)

HEAR

- ❖ TONE (forceful, shy)
- ❖ URGENCY (hesitation)
- ❖ SILENCE
- ❖ SPEECH (accent, slurred)

HEAR

- ❖ SIRENS
- ❖ WATER (dry, gushing)
- ❖ BELLS
- ❖ CHIMES
- ❖ WEATHER (lightening)

SMELL

- ❖ FLOWERS (roses, lilacs)
- ❖ GRASS (freshly cut)
- ❖ FOOD (Bar-B-Q, onions)
- ❖ AFTERSHAVE (Allspice)
- ❖ PERFUME (Diamonds)

SMELL

- ◊ BREATH (garlic)
- ◊ B.O. ('nough said!!)
- ◊ OIL/GREASE
- ◊ HAIRSPRAY

SMELL

- ◊ ALCOHOL (consumed or not)
- ◊ ANIMALS (urine, horses)
- ◊ DUST
- ◊ DAMPNESS
- ◊ CANDLES (scented)
- ◊ DRUGS (THC)

FEEL

- ◊ TEXTURES
- ◊ HEAT
- ◊ COLD
- ◊ EMOTIONS (shame, fear)
- ◊ WEATHER (rain)

FEEL

- SURFACES (granite, wood)
- CONFINES (claustrophobic)
- BODIES (crammed in the corner)
- PRESSURE (hands on neck)
- MOVEMENT (right or left, up or down)

FEEL

- BUMPS (chiggers, disease)
- PAIN (shooting, constant, where)

GOAL #2

**ALLOWING THE
JURORS TO
"EXPERIENCE"
THE CRIME**

- ▶ TAKE YOUR EVIDENCE AND PAINT THE CRIME SCENE WITH THE JURORS IN THE ROOM
- ▶ DETAILS, DETAILS, DETAILS!
- ▶ REPEAT WITH EVERY WITNESS WHO KNOWS THE DETAILS
- ▶ TRIAL EXHIBITS
- ▶ TECHNOLOGY

GOAL #3

SHOWING THE JURORS YOU HAVE PROVEN YOUR CASE

- ▶ Confidence mixed with humility
- ▶ No abusing witnesses

GOAL #4

**STRENGTHENING THE
JURORS TO FIND
THE DEFENDANT
GUILTY**

- They must believe the defendant is guilty
- It's helpful if they like your witnesses
- It's better if they identify with your witnesses

GOAL #5

**RESISTING JURY
NULLIFICATION**

"He'll never do it again"

JURORS MUST WANT TO CONVICT

ACCOMPLISHING THESE

5 GOALS

OF DIRECT EXAMINATION

PROBLEM WITNESSES

• VICTIMS

• EYEWITNESSES (who don't want to get involved)

• CHILDREN

• GANG MEMBERS

GET THE LITTLE THINGS FIRST

SOME VICTIMS

- They doesn't want to be there
- They are present only because they were subpoenaed
- They are there only because they have no choice

Initial questions.....

- Know defendant
- Dating or married to defendant
- Child(ren) together
- Child(ren) in the home

Initial questions.....

- Where she lives
- Where he lives
- Where they live

Initial questions.....

- Where she works
- What she drives
- What he or they drive
- Where she banks (if \$ is involved)
- Where he or they bank

Initial questions....

- Where she typically buys her groceries
- Whether defendant usually goes with her when she goes grocery shopping
- Where she generally pays her bills (if fight is about bills)

Initial questions....

- Where she bowls (if defendant jealous of another on team)
- Hair (if defendant pulled out hair, cut, etc.)

DESCRIBE THE PLACE

- SMELL
- SEE
- HEAR
- FEEL

Get background information...

- Who generally does the laundry (if in the laundry room)
- Who generally cuts the grass (if broken mower that day)
- Who generally vacuums the car (if Search Warrant executed on the car)

- USE TRIAL EXHIBITS TO SHOW INSIDE HOUSE, VIDEO, PICTURES, ITEMS (BAT USED BY CHILD)
- WHERE CHILD GOES TO SCHOOL (IF TEACHER WILL BE A WITNESS)

SET THE STAGE FOR RECATANTATION

NOTE: This testimony should be preceded by a witness who tells how it really happened

Setting the stage....

- Does the defendant bring in income?
- Is his income used to help pay the bills?
- Would it be difficult for you to make ends meet without his income?
